U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-V-C-

DATE: JAN. 14, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an educator and education advocate, seeks classification as a member of the professions holding an advanced degree, and asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. *See* Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
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> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Dep't of Transp., 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner must demonstrate a past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the petitioner, rather than to facilitate the entry of a foreign national with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 23, 2014, at which time he was working as a program assistant at [redacted] a public charter school in [redacted] The record indicates that he has worked as a preschool and elementary school teacher in the United States since 2007 and previously worked as an educator and administrator in the Philippines.. The Petitioner provided letters confirming his employment history, evidence of his credentials and certification as a teacher, documentation of his membership in professional organizations, and copies of training certificates and performance evaluations. He also submitted numerous letters of recommendation from former colleagues, supervisors, and parents of students, attesting to his teaching expertise and his positive impact on student performance.

In an introductory letter, the Petitioner indicated that he is also a researcher, author, and education advocate, and that his mission is "to create programs, tools, researches [sic], studies, advocacies and projects for teachers and students for use in the entire US." Regarding his research, the Petitioner stated that his work as a preschool classroom teacher gave him the opportunity to conduct field studies and surveys analyzing curriculum and working conditions in children's centers, and that he gained another perspective for his research by working with different socio-economic groups in his position at [redacted] He submitted copies of research papers he had written, including [redacted]

[redacted]

The Petitioner asserted that he has written "several books for the education community," including a "peer reviewed and approved text," in addition to "different educators' resource materials such as: manuals, a book about an innovative teaching method for the US, and new curriculum designs for teaching to be used in the US." Supporting evidence included five "Approval of Review" letters from teachers stating: "I have reviewed the literary document authored by [the Petitioner] entitled, [redacted] and hereby approve of the essential usefulness of its contents." The Petitioner provided letters from a teacher at [redacted] and an administrator at [redacted] acknowledging acceptance of that literary document and stating that it has been used as a reference material. Letters from the pastor of [redacted] acknowledged acceptance of three additional works by the Petitioner, attesting to their "usefulness and service."

The Petitioner also indicated that he authored an analytical study about the curriculum of the [redacted] in Maryland, where he worked as an elementary school teacher for three years. He stated that it "was much appreciated by the board of education and was also acknowledged by the [redacted] Chief Academic Officer." He submitted a June 25, 2012, letter from [redacted] chief academic officer of [redacted] confirming acceptance of "A Developmental Analysis of the [redacted] Curriculum," co-authored by the Petitioner, and stating that it "will serve as a reference and resource for the district."

The introductory letter also included a discussion of the Petitioner's education advocacy work. He stated that he has "coordinated with different federal government agencies and high ranking public officials" on ongoing grant projects, including one aimed at creating a collegiate education program for former inmates and another training teachers and others to write artistic prose literature. The Petitioner submitted a copy of the grant proposal he wrote about educating former inmates, and documentation confirming his submission of that proposal and an application for a grant opportunity under the [redacted] Supporting evidence also included a January 7, 2013, letter from the office of Congressman [redacted] The letter indicated that it was sent in response to the Petitioner's requests for assistance with his grant projects and immigration status, and stated: "With respect to grants, I review constituent grant applications for support on a case-by-case basis. Accordingly, we would be happy to review a federal grant application executive summary to see if we would be able to support the application." Copies of email correspondence with the office of Congressman [redacted] in which the Petitioner described his grant proposals and inquired about the Congressman forwarding support letters on his behalf, were also submitted. The most recent email from Congressman [redacted] office, dated February 4, 2013, stated that the letters were in the process of being vetted.

In addition, the Petitioner stated that he has been "the proponent and author of a US national advocacy" called the [redacted]

which he states "pushes for national reforms and advancements" in the American education system based on his research. He indicated that his work on this project is "in cooperation with several education associations" and involves coordination "with federal and legislative bodies," and that he has created a website for the The Petitioner submitted an "Advocacy Introductory Position Paper" for the and printout of a Facebook page entitled " " which indicated that the page had 7 "friends." He provided copies of unsigned letters from officials at the Maryland State Department of Education and the U.S. Department of Education, respectively. The first letter, which indicated that it was a response to the Petitioner's request for a meeting with the State Superintendent of Schools, thanked him for expressing interest in doing business with the Maryland State Department of Education and encouraged him to continue his advocacy efforts. The second letter thanked the Petitioner for his "letter to containing such instructive insight into curriculum improvements and integrated approaches to teaching," and stated that the letter was "referred to the Office of Elementary and Secondary Education for review."

As another aspect of his advocacy work, the Petitioner stated that he submits research studies to the U.S. Department of Education's ' Supporting documentation included a copy of a February 6, 2013, email exchange, in which a representative from the acknowledged receipt of an article submitted by the Petitioner and informed him that the reviews research on the effectiveness of educational interventions but cannot provide a timeline for the review process.

The Petitioner further indicated that he has presented seminars for teachers and voluntary tutorials for the benefit of students. He submitted certificates from the in appreciation for two presentations he made in 2012. The Petitioner also provided a copy of a project proposal he co-authored for a volunteer program to assist special education students preparing for the and a Certificate of Recognition that he received from the principal and autism chair of in appreciation for his "Noble Contributions as the Author and Organizer" of the program.

Initial evidence submitted with the Form I-140 also included copies of teaching awards the Petitioner received, consisting of certificates from and In addition, the Petitioner indicated that he had received nominations for the " ' an outstanding teacher's award nomination presented all over the United States citing the best educator in the " He submitted copies of three nomination forms for 2012 ' awards, which were completed on his behalf by two colleagues at and the president of In addition, the Petitioner submitted a copy of the December 2012 Newsletter, for which he served as an editor and author.

The Director issued a Notice of Intent to Deny the Form I-140 (NOID) on December 14, 2014, stating that additional evidence was required to establish eligibility under the analysis set forth in

NYSDOT. The Director indicated, in part, that the Petitioner had not shown how his work would have an impact beyond his own students, that he had not established that his research work had been published or implemented by others in his field, and that he had not otherwise demonstrated past influence the field.

In a letter responding to the NOID, the Petitioner stated that his work has "achieved nationwide and national status," as demonstrated the acknowledgement of his "works and books" by "nationwide education organizations such as the " He indicated that he has self-published his books in order to share them freely with the American public, and that he has also posted his work "online in a website wherein it is being used and reference[d] by many educators in different states." The Petitioner provided letters from two educators in Arizona and two educators in Maryland, attesting to their use of his work and its national significance. Three of the letters stated that his written work played a significant role in furthering the field of education.

As further evidence of the "national reach" of his work, the Petitioner provided additional newsletters to which he contributed, including a November 2012 newsletter with a "Featured Members" article about the Petitioner. His NOID response also included a letter from the office of Senator as additional evidence of his "coordination with government officials" to advance his advocacy. The letter thanked the Petitioner for contacting the office and directed him to the "Constituent Services" and "Grant Assistance" portions of the Senator's webpage, stating that she "would be happy to write a letter for support for you to the appropriate agency" once he has found a potential source of federal money for his project. In addition, the Petitioner submitted evidence indicating that he reviewed a manuscript for the

The Director denied the Form I-140 on February 10, 2015, finding that the Petitioner had not established that the benefits of his proposed work are national in scope, or demonstrated a past record of specific prior achievement with some degree of influence on the field as a whole. The decision stated that the Petitioner's prospective work as a teacher "is limited to a local impact," and that the record was insufficient to show the past impact of his research, books, or advocacy work on a national level. On appeal, the Petitioner asserts that the Director overlooked facts and evidence, and that the previously submitted documentation establishes his eligibility for the benefit sought.

III. ANALYSIS

Unlike the third prong of *NYSDOT*, which focuses on the individual and his or her past achievements, the second prong relates to the intended occupation and its proposed benefits. *Id.* at 217. We agree with the Director's statement that the proposed benefits of the Petitioner's work as a classroom teacher would not be national in scope. However, in addition to his work as an educator, the Petitioner expressed his intent to conduct research and advocacy work regarding the advancement of the U.S. education system. As we find the proposed benefits of such work to be national in scope, we will withdraw the Director's finding on this issue. We conduct appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

As stated above, the analysis set forth in the third prong of *NYSDOT* requires a petitioner to demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. To do this, a petitioner must establish "a past history of demonstrable achievement with some degree of influence on the field as a whole." *NYSDOT,* 22 I&N Dec. at 219, n. 6.

The Petitioner has asserted that his research and writing have had a nationwide influence, and he submitted letters confirming receipt of his written work by teachers and administrators in Maryland, and Arizona, many of whom state that they have found his work useful as a reference material. However, the individuals do not identify ways in which his writings have changed their teaching methods, nor do they attest to the widespread implementation of his ideas or findings by others in the field. The record indicates that the Petitioner has submitted research studies to the but he has not shown that it was selected for use by that program. While the Petitioner stated that he has also posted his work online to be freely used by others, we find the record insufficient to support his assertions that his writings have influenced teachers on a national level or have otherwise had an impact on the field as a whole. Statements made without supporting documentary evidence are of limited probative value and are not sufficient for meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998).

Regarding his role as an education advocate, the Petitioner describes his work on grant projects and his initiation of the advocacy group However, the record does not establish that he was awarded either of the grants for which he applied, nor does it include evidence documenting the effects of any activities. Further, while the Petitioner attests that he coordinated with government agencies and officials, the letters and emails that he submitted do not establish government involvement on these projects, but instead indicate that the Petitioner was offered a level of assistance routinely provided to constituents.

The record establishes that the Petitioner served as a peer-reviewer for an article, and that he has been an editor and author for the newsletter. He did not, however, submit evidence regarding the circulation of these publications, or documentation showing that his contributions to them have influenced others in the field. In addition, the evidence demonstrates that the Petitioner has presented seminars and tutorials for teachers and students, but does not document the impact of those presentations. Finally, while particularly significant awards may serve as evidence of influence on his field, the Petitioner did not demonstrate that the awards he has received are indicative of such influence.

For the reasons discussed above, we find the record insufficient to establish that the Petitioner has had some degree of influence on the field as a whole.

IV. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual of exceptional ability should be exempt from the requirement of a job offer based on national interest. In this instance, the Petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. While a petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, a petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole"). Considering the evidence submitted, the Petitioner has not established by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-V-C-*, ID# 14973 (AAO Jan. 14, 2016)